

AMENDMENTS TO THE DRAWINGS

While the Examiner did not specify reasons for objecting to the drawings (*Office Action*, page 1), Applicants submit replacement drawings for the figures to correct known informalities. For example, FIG. 1 has been replaced to improve the quality of the drawing. FIG. 2 and FIG.3, for example, are replaced to include appropriate margins according to 37 CFR 1.84(g).

In FIG. 1, an arrowhead has been added to the connector between message 100 and reliable classifier 104. Support for this addition is in the specification as filed, which discloses at least, "Reliable classifiers 102 and 104 process incoming message 100 to make a classification" (page 5, line 14).

No new matter is introduced through the present replacement figures.

REMARKS

Rejections Pursuant to 35 U.S.C. § 112

The Examiner states that “[c]laims 3-4 and 21-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention.” (*Office Action*, page 2).

The applicants have amended claims 3 and 21-26 to include the element, “having a probability of erroneous classification of less than approximately one percent.” Support for this newly added claim element may be found, at least, in the specification as filed, which discloses, “[o]f the messages that are determined to be either spam or non-spam [by a reliable classifier], the probability of erroneous classification may be less than 1%.” (page 6, lines 7-8). Through this amendment, the applicants have provided a standard for ascertaining the required reliability of the message classifier thereby apprising a person having ordinary skill in the art of the scope of the presently claimed invention.

The applicants have further amended claim 4 to include the element, “wherein a probability of erroneous classification by the machine classifier is less than a probability of erroneous classification by the statistical message classifier.” Support for this element may be found, at least, in the specification as filed, which discloses, “a classifier is considered to be reliable so long as it is able to in some cases make a more accurate classification than the statistical message classifier under training.” (page 6, lines 9-11). Through this amendment, the applicants have provided a measure for ascertaining the

required degree of reliability of the machine classifier thereby apprising a person having ordinary skill in the art of the scope of the presently claimed invention.

Rejections Pursuant to 35 U.S.C. § 101

The Examiner states that “[c]laims 1, 20, and 28-31 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.” (*Office Action*, page 3). The Examiner further states that “[t]he claimed invention does not provide a practical application that produces a useful, tangible, and concrete result.” (*Office Action*, page 3). The applicants respectfully traverse in light of at least the present amendments and following remarks.

35 U.S.C. 101 requires that a claimed invention, as a whole, be useful and accomplish a practical application; that is, it must produce a “useful, concrete and tangible result.” State Street Bank & Trust Co. v. Signature Financial Group, 149 F.3d 1368, 1373–74 (Fed. Cir. 1998). The purpose of this requirement is to ensure patented inventions possess a certain level of ‘real world’ value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research. See In re Fisher, 421 F.3d 1365 (Fed. Cir. 2005).

The applicants contend that the independent claims all possess a certain level of ‘real world’ value in that the independent claims all recite a ‘*useful, concrete and tangible result.*’ The independent claims all have some means to update a statistical message classifier that is configured to detect a junk message, for example, ‘*updating the statistical message classifier*’ as in the case of claim 1. The update itself is *useful* to someone who values up-to-date junk message detection as it relates to message delivery. Furthermore, the message, such as an email communication—regardless of the classification—is *concrete* and *tangible*. As each of the independent claims recites such

claim elements evidencing a concrete, tangible, and useful result, the applicants believe the rejection to have been overcome.

Notwithstanding the tangible utility of the presently claimed invention, the applicants respectfully contend that the Examiner has not adequately provided support to justify a claim rejection under 35 U.S.C. § 101. To support a section 101 rejection, the Examiner must (A) make a *prima facie* showing that the claimed invention lacks utility and (B) provide a sufficient evidentiary basis for factual assumptions relied upon in establishing the *prima facie* showing. *See In re Gaubert*, 524 F.2d 1222, 1224 (CCPA 1975). Therefore, should the Examiner maintain the rejection, the applicants respectfully request the Examiner evidence *why* an updated statistical message classifier configured to detect a junk message lacks specific and substantial utility. *See* MPEP 2107.02 (requiring that any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility). As evidentiary support for a rejection under 35 U.S.C. § 101 has not been met, applicants respectfully request the Examiner's rejection be withdrawn.

Rejections Pursuant to 35 U.S.C. § 102(e)

The Examiner has rejected independent claims 1, 20, and 28-31 as being anticipated by Bandini et al. (U.S. 2002/0199095) [hereinafter "*Bandini*"]. The applicants respectfully traverse in light of at least the present amendments and following remarks.

When evaluating the scope of a claim, every limitation in the claim must be considered. See *Diamond v. Diehr*, 450 U.S. 175, 189 (1981). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The applicants contend that *Bandini* does not teach "updating the statistical message classifier according to the classification made by the machine classifier" as recited in claim 1. As each and every limitation is not expressly or inherently found, the applicants contend that the rejection is overcome at least as detailed below.

***Bandini* does not teach "updating the statistical message classifier according to the classification made by the machine classifier" as claimed in claim 1.**

Applicants assert that *Bandini* does not teach, at least, "updating the statistical message classifier according to the classification made by the **machine classifier**" as recited in claim 1. *Bandini* discloses "SPAM messages are preferably blocked [by the e-mail relay 46] and used to update data in the SPAM database 37." [0021]. *Bandini* further discloses, "[t]he e-mail relay 46 operates to intercept e-mail messages and extract

attribute data from messages.” [0020]. *Bandini* thus discloses an e-mail relay that can self-update without user input.

Bandini does not, however, teach updating the e-mail relay 46 based on a classification separately made by a **machine classifier**. *Bandini* instead teaches that “the SPAM database 37 is preferably compiled by a combination of **administrator** and **end user** actions.” [0034] (emphasis added) (see also FIG. 4). *Bandini* further teaches that the e-mail relay 46 can be updated by adding e-mails to the database according to a **user** determination. [0035]-[0036] (emphasis added). *Bandini* thus teaches compiling a database using **user** input. Therefore, *Bandini* does not teach or suggest “updating the statistical message classifier according to the classification made by the **machine classifier**.”

Further, the machine classifier and the statistical message classifier, as disclosed in the specification as filed, classify messages differently. The machine classifier, as described in the specification as filed, for example, “may classify both good and junk messages.” Page 5, line 6-7. For example, the message classifier may include “an adaptive whitelist, . . . a collaborative fingerprinting filter, . . . an image analyzer, . . . a probe account, . . . [or] a challenge response classifier.” Page 6, lines 13-17.

To contrast, the statistical message classifier, “comprises a knowledge base that tracks the spam probability of features in classified messages” as recited in amended claim 1 and disclosed on page 6, lines 19-20 of the specification as filed. As such, the machine classifier and the statistical message classifier use distinct processes for classifying messages. *Bandini* does not teach a separate e-mail relay that classifies

messages differently from another email relay and, therefore, does not teach the machine classifier.

Bandini further discloses that "the first e-mail relay 46 cooperate[s] with the second e-mail relay 36 to share data from the SPAM database 37, 45. Accordingly, the first e-mail relay 46 and the second e-mail relay 36 exchange data so as to synchronize the SPAM data stored in each of the local SPAM databases 37, 45." [0040]. Rather than merely synchronizing databases, the machine classifier, as claimed, updates the statistical message classifier. As disclosed in the specification as filed, for example, the "statistical message classifier 106 is trained using results from the [machine] classifiers periodically or as messages are processed." Page 5, lines 18-19. As such, the machine classifier does not receive features or other data, such as synchronization data, from the statistical message classifier. Thus, the machine classifier capable of updating a statistical message classifier is distinct from two e-mail relays capable of synchronization as disclosed in *Bandini*.

Independent claims 20 and 28-31 recite certain similar elements as claim 1. As such, independent claims 20 and 28-31 are allowable for at least the same reasons.

Finally, as a dependent claim incorporates by reference all the limitations of the claim from which it depends (see 35 U.S.C. § 112, ¶ 4), claims 2-19 are allowable for at least the same reasons as claim 1. Dependent claims 21-27 are allowable for at least the same reasons as claim 20.

CONCLUSIONS

The Examiner's rejections of independent claims 1, 20 and 28-31 are overcome in that the claimed invention is directed to statutory subject matter and the cited references fail to teach each and every limitation of the claims. The references of record fail to disclose, at least, updating the statistical message classifier according to the classification made by the machine classifier. As such, the Examiner has failed to evidence the anticipation of the independent claims and the rejections set forth in the *Office Action* are overcome. Further, dependent claims 3-4 and 21-26 are amended to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The applicants respectfully request the passage of the present application to allowance. The Examiner is invited to contact the applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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